FARAD CONTINUATION SHEET No.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE.

CRIMINAL APPLICATION NO. 866 OF 2004.

Timir Damodar Koli. ..Applicant.
vs.
The State of Mahasrashtra. ..Respondent.

Office Notes,Office Memoranda of Coram, appearnaces,Courts's orders or directions and Registrar's orders.	:	Court's or Judge's orders

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Shri Ganesh Gole with Niranjan Mundargi for the applicant.

Shri D.P. Adsule, A.P.P. for the State.

Shri R.D. Suryavanshi for respondent No.2.

CORAM: V.M.KANADE,J.
DATED: 24-2-2005.

P.C.:

1. Heard Shri Niranjan Mundargi for Shri Ganesh Gole for the applicant. He states that Shri Gole is on his leg in another Court and therefore, unable to attend the case. He, therefore, seeks adjournment in the matter. Alternatively, Shri Mundargi submits that the matter be kept back for some time.

2. The present application was filed in November 2004. Thereafter ad-interim order was granted by this Court by order dated 25.3.2004. Thereafter on various dates adjournments was sought on the ground that settlement talks are going on

and the matter is likely to be settled within a short time. With the result, on this ground matter was adjourned on 3.9.2004, 27.10.2004, 13.12.2004, 16.12.204, 22.12.2004, 17.1.2005, 31.1.2005, 14.2.2005, 15.2.2005 and 17.2.2005. Today, in the morning, it was made clear that no further adjournment would be granted and the matter was specifically kept at 2.45 p.m. I have heard Advocate Shri Ganesh Gole and Advocate Shri Suryavanshi at length.

3. In the present case, respondent No.2 had entered into an agreement for purchase of a flat with the accused, who was developer and contractor of a plot known as Karuna Apartment. The present petitioner is the brother of the said developer and he was in charge of the entire business which was carried on by the accused. Respondent No.2 paid amount of Rs. 1,69,000/- towards full and final payment for purchase of flat on the 3rd floor in the said building and agreement was executed. This agreement was duly registered on 3.2.1999. Though accused agreed to give possession of the flat, for one reason or the other, possession was not given. Thereafter complaint was filed

under sections 406 and 420 of the Indian Penal Code and also under section 506 and 511 of the Maharashtra Ownership Flats Act.

4. The trial Court issued process against the accused. An application was, thereafter filed for discharge on 26.11.2002 before the Judicial Magistrate, F.C., Thane, which came to be rejected by order dated 17.10.2003. Against the said order revision application was preferred to the Sessions Court, Thane, which was also rejected on 15.12.2003. Against the said order, present application is filed under section 482 of the Criminal Procedure Code, on various grounds mentioned in para 7 of the said application. One of the grounds taken is that there was no averment made in the complaint so far as the role given to the present applicant is concerned, and only relation of the applicant with the accused No.1 is that he is her brother. It is submitted that the trial Court has not properly assessed the evidence brought on record by the complainant and has committed an error in issuing process against the applicant.

5. I have perused the complaint. From the complaint it can be seen that there are several averments made in paras 1,4,5,7,7,9,10 and 11. All these averments made in the aforesaid paras clearly indicate that sufficient facts have been averred so as to constitute offence punishable under sections 406 and 420 of the Indian Penal Code. I have perused the order passed by the Sessions Court as also order passed by the trial Court. I do not see any error of law which is apparent on the face of the record committed by the Courts below.

6. In the result, criminal application is rejected. Interim order to stand vacated.

7. The trial Court is directed to expedite hearing of the trial and decide the same within 3 months.

8. Parties to act on authenticated copy of this order.